

**SECOND AMENDMENT TO LETTER OF AGREEMENT
BETWEEN
YMCA OF METROPOLITAN LOS ANGELES
AND
CITY OF LOS ANGELES
FOR UTILIZATION OF
HYGIENE FACILITIES FOR UNSHELTERED RESIDENTS**

WHEREAS, the YMCA of Metropolitan Los Angeles ("YMCA" or Vendor) shall provide hygiene facilities for unsheltered residents during the period covered by the emergency declaration related to COVID 19; and

WHEREAS, the Vendor possesses the required expertise, equipment, and ability to complete required tasks; and

WHEREAS, this Letter of Agreement and the Amendment to this Letter of Agreement (collectively, Agreement) are being used by the City to secure facilities to provide hygiene services for unsheltered residents; and

WHEREAS, the Vendor's services are deemed to be vital to meet the City's commitment to protecting the public health and environment, maintaining safe work environments, and efficient operations; and

WHEREAS, the Vendor will provide a unique and technical service for a temporary duration, for which the use of competitive bidding for such services is not practical or advantageous, nor reasonably practicable or compatible with the City's interests. Thus, per Los Angeles City Charter section 371(e)(2) and section 372, this Agreement is exempt from competitive bidding and competitive proposal; and

WHEREAS, by affixing contract vendor's signature to this Agreement, the contract vendor agrees to adhere to the Non-Discrimination, Equal Employment Practices and Affirmative Action Program Provisions for the duration of this contract and also acknowledges their responsibility to comply with the Non-Discrimination, Equal Employment Practice and Affirmative Action provisions as shown in the attachment to the Letter of Agreement; and

WHEREAS, this Amendment to the Letter of Agreement shall permit the parties to have flexibility to substitute and/or utilize facilities to provide the contemplated hygiene services;

NOW, THEREFORE, in consideration of the foregoing and of the benefits which will accrue to the parties hereto in carrying out the terms and conditions of this Agreement, it is understood and agreed by and between the parties hereto as follows

Term of the Agreement:

The term of this Agreement shall cover services from April 1, 2020 to August 31, 2020, or the period of time in which the Mayor's emergency declaration or any extensions thereto related to COVID-19 are in effect, whichever is later, and any additional time as may be necessary to close out activities, provided that said term is subject to provisions of this Agreement and shall not exceed three years. Performance shall not commence until the Vendor has obtained the City's approval of required documents described in this Agreement, and is in receipt of those and/or other documents as described in this Agreement and set forth below:

1. **Expiration and Termination**

Notwithstanding any other provisions of this Agreement, the YMCA may terminate this Agreement for any or no reason by providing the City with at least one week advance written notice of such termination. The City will be entitled to a refund for the portion of the month that the City did not use for any and all of the Facilities upon expiration and/or termination..

2. **Return Condition**

The City may not remove any fixtures that are built-into or attached to any portion of the facilities or that were paid for with YMCA funds.

Upon termination of this Agreement, the City shall ensure that it has fully cleaned the Facilities (or will conduct a full cleaning of the Facilities within forty-eight (48) hours after the expiration of the term of this Agreement), using hospital-grade disinfectant and cleaning supplies, at each Branch listed on Exhibit A to ensure the Facilities return to pre-agreement condition and to ensure no infections or spread by the coronavirus.

Upon return of possession to the YMCA, or termination of this Agreement, the Facilities shall be in a safe and well-maintained condition, comparable to their condition upon commencement of the City's possession thereof. Upon surrender of possession, if the Facilities are not in such condition, at the election of the YMCA, the City shall either restore them to the required condition or shall pay the YMCA the reasonable cost of such restoration.

Statement of Work to be Provided by the Vendor:

The Vendor shall provide services which are as follows:

1. **City Use of Facilities**

The City, subject to all provisions of this Agreement, shall be permitted to use the Facilities for purposes of providing and conducting its hygiene program, and for other purposes permitted pursuant to this Agreement. "Facilities" refers to the showers and adjacent bathrooms, lockers and other such adjacent spaces at the

Branches. No such use of the Facilities by the City shall interfere with the activities of the YMCA.

The City shall use the Facilities solely for purposes of its unsheltered hygiene program, and in conformance with all federal, state and municipal regulations and ordinances, including, but not limited to, those related to sanitation, health and safety, as well as the YMCA and City's administrative regulations and/or the YMCA's policies and procedures.

2. Schedule of Use

Subject to the exclusive and primary use rights of the YMCA, the City's use of the YMCA, as described in Paragraph 1, above, shall be from 9:00 a.m. to 2:00 p.m. Monday through Friday.

3. Responsibility for Staffing and Operating the Facilities

The City shall inspect the Facilities for dangerous conditions of property prior to its use to ensure property is safe and ascertain any preexisting conditions of damage and/or wear and tear. By its use of the Facilities, the City acknowledges, agrees and represents that it has inspected, or immediately upon entering will inspect, and carefully consider such premises and Facilities. It is further warranted that such entry into the YMCA for observation or use of any facilities or equipment or participation in the program constitutes an acknowledgement that such premises and all facilities and equipment thereon and such affiliated program have been inspected and carefully considered and that the City finds and accepts same as being safe and reasonably suited for the purpose of such observation, use or participation by the City and the participants in the program.

Further, each participant in the program will sign a waiver releasing the City and YMCA against any claims, actions, lawsuits, damages and judgments including attorney's fees arising out of its use of facilities. The City will provide YMCA with a waiver form for the City. Participants must comply with the YMCA's Shower Program Rules and Agreement and must execute and complete the YMCA's Application for Shower Program and the YMCA's Assumption of Risk, Release, and Waiver of Liability and Indemnity Agreement.

4. Project Management

Both parties, the City and YMCA, shall designate a project manager who shall have overall responsibility for managing and coordinating the performance of each party's obligations under this Agreement and be responsible for the implementation of this Agreement, including resolution of any issues that may arise during the performance of either party's obligations hereunder, and be authorized to act for and on behalf of each party with respect to all matters relating to this Agreement.

- a. The City's project manager shall have the discretion to substitute, add, or remove Facilities subject to this Agreement upon the mutual agreement with

YMCA and as otherwise consistent with the terms of this Agreement. To the extent a Facility is substituted or removed from use under this Agreement, the City shall not compensate YMCA for that Facility, or shall be entitled to a pro rata refund of any compensation paid, as applicable.

- b. Should the Vendor determine a need to alter the services described, a request must be submitted to the City in writing. The Vendor shall not alter such services without the City's written approval.

Terms of Compensation:

For the complete and satisfactory performance of the terms of this Agreement, the City shall pay to the Vendor an amount not to exceed **\$860,000**. The schedule of work and prices are as follows:

1. **Costs and Fees**

In consideration for use of the Facilities, the City shall pay YMCA a fee for the use of the Premises and Facilities during the term of this Agreement in the amount of \$20,000.00 per month, per Branch **(no less than nine (9) Branches monthly)** being utilized under this Agreement, payable in advance due on the first of each month. The use of Facilities includes, but is not limited to, water, sewer, electricity and gas, as needed.

2. **Pro Rata Refund**

Notwithstanding the above, in the event that YMCA is unable to provide nine (9) Facilities for the purpose of providing services pursuant to the terms of this Agreement, the City shall be entitled to a pro rata refund of fees based on the number of Facilities available and/or the length of use.

3. **Responsibility for Damage**

The City shall be solely responsible for the repair of any damage to the Facilities due to, or as a result of, the City's use of such facilities. The repairs shall be sufficient to restore the damaged item to its condition prior to such damage. The City shall ensure that such repairs are made no later than 90 days after the damage occurs.

4. **Exclusion**

Each program participant, in accordance with the Shower Program Rules and Agreement, will be temperature screened by YMCA staff and not allowed into the YMCA if temperature is over 100.4 degrees Fahrenheit, or otherwise exhibits common symptoms of COVID-19, including, but not limited to cough, sneeze, shortness of breath or other indicators of flu or cold.

Supporting documentation for all labor, expense, and material charges billed must accompany invoices submitted for payment.

The reimbursement for expenses incurred in the performance of this Agreement shall be made only upon acceptance by the City of the Vendor's invoice and supporting documentation. Payments to the Vendor may be unilaterally withheld or reduced by the City if the Vendor fails to comply with the provisions of this Agreement.

Liability and Insurance Policy

1. The City shall obtain, and shall maintain, at its own cost and expense, for the term of this Agreement, a policy of commercial general liability insurance ("Policy"), written on an "occurrence" basis with a combined single limit of no less than one million dollars (\$1,000,000) per occurrence covering the claims for bodily injury including death, property damage and damages that is alleged to arise in whole or in part out of this program and the use by the City and the program's participants of the facilities (which will also include for these purposes the parking lot, the driveways, roads and any other point of ingress or egress), and participation in the program, including any active or passive negligence attributed to, or claimed to be attributed to, the YMCA, or any of its directors, officers, employees, agents, volunteers, invitees, or contractors, or any person directly or indirectly employed by any of them. Furthermore, the Policy shall be properly endorsed to add the YMCA as a name insured.
2. In lieu of maintaining a Policy in the amounts set forth above and Memoranda of Coverage related to such a Policy, the City may provide evidence to the YMCA that the City has a formal program of self-insurance in effect that is acceptable to the YMCA.
3. Prior to any use by the City of YMCA Facilities pursuant to this Agreement, the City shall provide to the YMCA copies of all Memoranda of Coverage or all insurance policies required to be obtained pursuant to this Agreement, or evidence to the YMCA that the City has a formal program of self-insurance, as applicable.
4. To the extent the City has a Policy, then the City will be required to notify the YMCA in writing immediately if the policy lapses or any non-payment of premiums by the City. If the City fails to notify the YMCA of such lapse or non-payment, the Agreement will be subject to termination by the YMCA immediately. The lapse or other reservation of any applicable insurance policy does not excuse the City's obligation to defend and indemnify the YMCA as outlined in this Agreement.
5. The City hereby agrees to indemnify, defend, and hold harmless the YMCA and its directors, officers, administrators, employees, volunteers, and agents against and from any liability, including for damage to property and injury or death of any person, and any claim, action or proceeding against the YMCA, arising in whole or in part out of this Agreement or the City's use of the Facilities for this program (which will also include for these purposes the parking lot, driveways, roads, and any other point of ingress or egress), and participation in the program,

including any active or passive negligence attributed to, or claimed to attributed to, the YMCA.

6. The YMCA may participate in the defense of any such claim, action, or proceeding, utilizing legal counsel of its choice at the expense of the City. However, such participation shall not relieve the City of any obligation imposed pursuant to this Agreement. The YMCA shall promptly notify the city of any such claim, action, or proceeding and shall cooperate fully in the defense of the same.

Standard Provisions:

Except as to PSC-18 and PSC-23, Vendor agrees to comply with the provisions outlined in the City's "Standard Provisions for City Contracts" (Rev. 10/17), which are incorporated herein by reference. Vendor is responsible for completing and submitting all attendant documentation as requested by the City. In the event of an inconsistency between any of the provisions of this Agreement and/or attachments, the inconsistency shall be resolved by giving precedence in the following order:

1. Paragraphs set forth in this Agreement;
2. Standard Provisions for City Personal Services Contracts.

Vendor also agrees that unless otherwise exempt by the provisions of the Disclosure of Border Wall Contracting Ordinance (DBWCO) , any contract awarded will be subject to the DBWCO, Section 10.50 of the Los Angeles Administrative Code.

Applicable Law, Interpretation and Enforcement

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the City. This Agreement shall be enforced and interpreted under the laws of the State of California and the City.

If any part, term or provision of this Agreement shall be held void, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Agreement, the validity of the remaining portions of provisions shall not be affected thereby.

Counterparts

This Agreement may be executed in one or more counterparts, and by the parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. The parties further agree that facsimile signatures or signatures scanned into .pdf (or signatures in another electronic format designated by City) and sent by e-mail shall be deemed original signatures.

Signature Page

In witness whereof, the City of Los Angeles and YMCA of Los Angeles have caused this Agreement to be executed by their duly authorized representatives:

For: YMCA OF LOS ANGELES

By: _____

Name: <Insert name of vendor representative>

Title: <Insert title of vendor representative>

Date: _____

For: THE CITY OF LOS ANGELES

By: _____

Name: COMMISSIONER GREG GOODTitle: PRESIDENT

Department: BOARD OF PUBLIC WORKS

Date: _____

APPROVED AS TO FORM AND LEGALITY:

MICHAEL N. FEUER, City Attorney

By: _____

Name: ADENA M. HOPENSTAND

Title: Deputy City Attorney

Department: CITY ATTORNEY

Date: _____

ATTACHMENT A

Given the City's need for hygiene facilities for its unsheltered population, the City and YMCA hereby agree that the City will utilize the hygiene facilities at the following branches:

Anderson Munger Family YMCA
4301 W 3rd Street
Los Angeles, CSA 90020

Collins & Katz Family YMCA
1466 S Westgate Avenue
Los Angeles, CA 90025

Hollywood Wilshire YMCA
1553 N Schrader Boulevard
Los Angeles, CA 90028

Ketchum-Downtown YMCA
401 S. Hope Street
Los Angeles, CA 90071

Mid-Valley Family YMCA
6901 Lennox Avenue
Van Nuys, CA 91405

North Valley YMCA
11336 Corbin Avenue
Northridge, CA 91326

Weingart YMCA Wellness & Aquatic Center
9900 S Vermont Avenue
Los Angeles, CA 90044

Westchester Family YMCA
8015 S Sepulveda Boulevard
Westchester, CA 90045

West Valley Family YMCA
18810 Vanowen Street
Reseda, CA 91335

Wilmington YMCA
1127 N Avalon Boulevard
Wilmington, CA 90744